

109TH CONGRESS
1ST SESSION

S. 1388

To amend chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 13, 2005

Ms. SNOWE introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend chapter 6 of title 5, United States Code (commonly known as the Regulatory Flexibility Act), to ensure complete analysis of potential impacts on small entities of rules, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Regulatory Flexibility Reform Act of 2005”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.

Sec. 3. Clarification and expansion of rules covered by the Regulatory Flexibility Act.

Sec. 4. Requirements providing for more detailed analyses.

Sec. 5. Periodic review of rules.

Sec. 6. Clerical amendments.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) A vibrant and growing small business sector
4 is critical to creating jobs in a dynamic economy.

5 (2) Regulations designed for application to
6 large-scale entities have been applied uniformly to
7 small businesses and other small entities, even
8 though the problems sought to be solved by such
9 regulations are not always caused by these small
10 businesses and other small entities.

11 (3) Uniform Federal regulatory and reporting
12 requirements in many instances have imposed on
13 small businesses and other small entities unneces-
14 sary and disproportionately burdensome demands,
15 including legal, accounting, and consulting costs.

16 (4) Since 1980, Federal agencies have been re-
17 quired to recognize and take account of the dif-
18 ferences in the scale and resources of regulated enti-
19 ties, but have failed to do so.

20 (5) Alternative regulatory approaches that do
21 not conflict with the stated objectives of the statutes
22 the regulations seek to implement may be available
23 and may minimize the significant economic impact

1 of regulations on small businesses and other small
2 entities.

3 (6) Federal agencies have failed to analyze and
4 uncover less-costly alternative regulatory approaches,
5 despite the fact that the chapter 6 of title 5, United
6 States Code (commonly known as the Regulatory
7 Flexibility Act), requires them to do so.

8 (7) Federal agencies continue to interpret chap-
9 ter 6 of title 5, United States Code, in a manner
10 that permits them to avoid their analytical respon-
11 sibilities.

12 (8) The existing oversight of the compliance of
13 Federal agencies with the analytical requirements to
14 assess regulatory impacts on small businesses and
15 other small entities and obtain input from the Chief
16 Counsel for Advocacy has not sufficiently modified
17 the Federal agency regulatory culture.

18 (9) Significant changes are needed in the meth-
19 ods by which Federal agencies develop and analyze
20 regulations, receive input from affected entities, and
21 develop regulatory alternatives that will lessen the
22 burden or maximize the benefits of final rules to
23 small businesses and other small entities.

24 (10) It is the intention of Congress to amend
25 chapter 6 of title 5, United States Code, to ensure

that all impacts, including foreseeable indirect effects, of proposed and final rules are considered by agencies during the rulemaking process and that the agencies assess a full range of alternatives that will limit adverse economic consequences or enhance economic benefits.

(11) Federal agencies should be capable of assessing the impact of proposed and final rules without delaying the regulatory process or impinging on the ability of Federal agencies to fulfill their statutory mandates.

SEC. 3. CLARIFICATION AND EXPANSION OF RULES COVERED BY THE REGULATORY FLEXIBILITY ACT.

Section 601 of title 5, United States Code, is amended by adding at the end the following:

“(9) ECONOMIC IMPACT.—The term ‘economic impact’ means, with respect to a proposed or final rule—

“(A) any direct economic effect on small entities of such rule; and

“(B) any indirect economic effect on small entities which is reasonably foreseeable and results from such rule (without regard to whether

1 small entities will be directly regulated by the
2 rule).”.

3 **SEC. 4. REQUIREMENTS PROVIDING FOR MORE DETAILED**
4 **ANALYSES.**

5 (a) INITIAL REGULATORY FLEXIBILITY ANALYSIS.—
6 Section 603 of title 5, United States Code, is amended—

7 (1) by striking subsection (b) and inserting the
8 following:

9 “(b) Each initial regulatory flexibility analysis re-
10 quired under this section shall contain a detailed state-
11 ment—

12 “(1) describing the reasons why action by the
13 agency is being considered;

14 “(2) describing the objectives of, and legal basis
15 for, the proposed rule;

16 “(3) estimating the number and type of small
17 entities to which the proposed rule will apply;

18 “(4) describing the projected reporting, record-
19 keeping, and other compliance requirements of the
20 proposed rule, including an estimate of the classes of
21 small entities which will be subject to the require-
22 ment and the type of professional skills necessary
23 for preparation of the report and record;

24 “(5) describing all relevant Federal rules which
25 may duplicate, overlap, or conflict with the proposed

1 rule, or the reasons why such a description could not
 2 be provided; and

3 “(6) estimating the additional cumulative eco-
 4 nomic impact of the proposed rule on small entities
 5 beyond that already imposed on the class of small
 6 entities by the agency or why such an estimate is
 7 not available.”; and

8 (2) by adding at the end the following:

9 “(d) An agency shall notify the Chief Counsel for Ad-
 10 vocacy of the Small Business Administration of any draft
 11 rules that may have a significant economic impact on a
 12 substantial number of small entities either—

13 “(1) when the agency submits a draft rule to
 14 the Office of Information and Regulatory Affairs at
 15 the Office of Management and Budget under Execu-
 16 tive Order 12866, if that order requires such sub-
 17 mission; or

18 “(2) if no submission to the Office of Informa-
 19 tion and Regulatory Affairs is so required, at a rea-
 20 sonable time prior to publication of the rule by the
 21 agency.”.

22 (b) FINAL REGULATORY FLEXIBILITY ANALYSIS.—

23 (1) IN GENERAL.—Section 604(a) of title 5,
 24 United States Code, is amended—

1 (A) in paragraph (1), by striking “suc-
 2 cinct”;

3 (B) in paragraph (2), by striking “sum-
 4 mary” each place it appears and inserting
 5 “statement”;

6 (C) in paragraph (3), by—

7 (i) striking “an explanation” and in-
 8 serting “a detailed explanation”; and

9 (ii) inserting “detailed” before “de-
 10 scription”;

11 (D) in paragraph (4), by inserting “de-
 12 tailed” before “description”; and

13 (E) in paragraph (5), by inserting “de-
 14 tailed” before “description”.

15 (2) INCLUSION OF RESPONSE TO COMMENTS ON
 16 CERTIFICATION OF PROPOSED RULE.—Section
 17 604(a)(2) of title 5, United States Code, is amended
 18 by inserting “(or certification of the proposed rule
 19 under section 605(b))” after “initial regulatory flexi-
 20 bility analysis”.

21 (3) INCLUSION OF RESPONSE TO COMMENTS
 22 FILED BY CHIEF COUNSEL FOR ADVOCACY.—Section
 23 604(a) of title 5, United States Code, is amended by
 24 redesignating paragraphs (3), (4), and (5) as para-

1 graphs (4), (5), and (6), respectively, and inserting
2 after paragraph (2) the following:

3 “(3) the agency’s response to any comments
4 filed by the Chief Counsel for Advocacy of the Small
5 Business Administration in response to the proposed
6 rule, and a detailed statement of any changes made
7 to the proposed rule in the final rule as a result of
8 such comments;”.

9 (4) PUBLICATION OF ANALYSIS ON WEB SITE,
10 ETC.—Section 604(b) of title 5, United States Code,
11 is amended to read as follows:

12 “(b) The agency shall make copies of the final regu-
13 latory flexibility analysis available to the public, including
14 placement of the entire analysis on the agency’s Web site,
15 and shall publish in the Federal Register the final regu-
16 latory flexibility analysis, or a summary thereof that in-
17 cludes the telephone number, mailing address, and link to
18 the Web site where the complete analysis may be ob-
19 tained.”.

20 (c) CROSS-REFERENCES TO OTHER ANALYSES.—
21 Section 605(a) of title 5, United States Code, is amended
22 to read as follows:

23 “(a) A Federal agency shall be treated as satisfying
24 any requirement regarding the content of an agenda or
25 regulatory flexibility analysis under section 602, 603, or

1 604, if such agency provides in such agenda or analysis
 2 a cross-reference to the specific portion of another agenda
 3 or analysis that is required by any other law and which
 4 satisfies such requirement.”.

5 (d) CERTIFICATIONS.—The second sentence of sec-
 6 tion 605(b) of title 5, United States Code, is amended—

7 (1) by inserting “detailed” before “statement”;

8 and

9 (2) by inserting “and legal” after “factual”.

10 (e) QUANTIFICATION REQUIREMENTS.—Section 607
 11 of title 5, United States Code, is amended to read as fol-
 12 lows:

13 **“§ 607. Quantification requirements**

14 “In complying with sections 603 and 604, an agency
 15 shall provide—

16 “(1) a quantifiable or numerical description of
 17 the effects of the proposed or final rule and alter-
 18 natives to the proposed or final rule; or

19 “(2) a more general descriptive statement and
 20 a detailed statement explaining why quantification is
 21 not practicable or reliable.”.

22 **SEC. 5. PERIODIC REVIEW OF RULES.**

23 Section 610 of title 5, United States Code, is amend-
 24 ed to read as follows:

1 **“§ 610. Periodic review of rules**

2 “(a) Not later than 180 days after the enactment of
3 the Regulatory Flexibility Reform Act of 2005, each agen-
4 cy shall publish in the Federal Register and place on its
5 Web site a plan for the periodic review of rules issued by
6 the agency that the head of the agency determines has
7 a significant economic impact on a substantial number of
8 small entities. Such determination shall be made without
9 regard to whether the agency performed an analysis under
10 section 604. The purpose of the review shall be to deter-
11 mine whether such rules should be continued without
12 change, or should be amended or rescinded, consistent
13 with the stated objectives of applicable statutes, to mini-
14 mize any significant adverse economic impacts on a sub-
15 stantial number of small entities. Such plan may be
16 amended by the agency at any time by publishing the revi-
17 sion in the Federal Register and subsequently placing the
18 amended plan on the agency’s Web site.

19 “(b) The plan shall provide for the review of all such
20 agency rules existing on the date of the enactment of the
21 Regulatory Flexibility Reform Act of 2005 within 10 years
22 after the date of publication of the plan in the Federal
23 Register and every 10 years thereafter and for review of
24 rules adopted after the date of enactment of the Regu-
25 latory Flexibility Reform Act of 2005 within 10 years after
26 the publication of the final rule in the Federal Register

1 and every 10 years thereafter. If the head of the agency
2 determines that completion of the review of existing rules
3 is not feasible by the established date, the head of the
4 agency shall so certify in a statement published in the
5 Federal Register and may extend the review for not longer
6 than 2 years after publication of notice of extension in
7 the Federal Register. Such certification and notice shall
8 be sent to the Chief Counsel for Advocacy and Congress.

9 “(c) Each agency shall annually submit a report re-
10 garding the results of its review pursuant to such plan
11 to Congress and, in the case of agencies other than inde-
12 pendent regulatory agencies (as defined in section 3502(5)
13 of title 44, United States Code), to the Administrator of
14 the Office of Information and Regulatory Affairs of the
15 Office of Management and Budget. Such report shall in-
16 clude the identification of any rule with respect to which
17 the head of the agency made a determination of infeasibility
18 under paragraph (5) or (6) of subsection (d) and
19 a detailed explanation of the reasons for such determina-
20 tion.

21 “(d) In reviewing rules under such plan, the agency
22 shall consider—

23 “(1) the continued need for the rule;

24 “(2) the nature of complaints received by the
25 agency from small entities concerning the rule;

1 “(3) comments by the Regulatory Enforcement
2 Ombudsman and the Chief Counsel for Advocacy;

3 “(4) the complexity of the rule;

4 “(5) the extent to which the rule overlaps, du-
5 plicates, or conflicts with other Federal rules and,
6 unless the head of the agency determines it to be in-
7 feasible, State and local rules;

8 “(6) the contribution of the rule to the cumu-
9 lative economic impact of all Federal rules on the
10 class of small entities affected by the rule, unless the
11 head of the agency determines that such calculations
12 cannot be made and reports that determination in
13 the annual report required under subsection (c);

14 “(7) the length of time since the rule has been
15 evaluated or the degree to which technology, eco-
16 nomic conditions, or other factors have changed in
17 the area affected by the rule; and

18 “(8) the current impact of the rule, including—

19 “(A) the number of small entities to which
20 the rule will apply; and

21 “(B) the projected reporting, record-
22 keeping and other compliance requirements of
23 the proposed rule, including—

1 “(i) an estimate of the classes of small
 2 entities that will be subject to the require-
 3 ment; and

4 “(ii) the type of professional skills
 5 necessary for preparation of the report or
 6 record.

7 “(e) The agency shall publish in the Federal Register
 8 and on its Web site a list of rules to be reviewed pursuant
 9 to such plan. Such publication shall include a brief de-
 10 scription of the rule, the reason why the agency deter-
 11 mined that it has a significant economic impact on a sub-
 12 stantial number of small entities (without regard to wheth-
 13 er it had prepared a final regulatory flexibility analysis
 14 for the rule), and request comments from the public, the
 15 Chief Counsel for Advocacy, and the Regulatory Enforce-
 16 ment Ombudsman concerning the enforcement of the
 17 rule.”.

18 **SEC. 6. CLERICAL AMENDMENTS.**

19 (a) IN GENERAL.—Section 601 of title 5, United
 20 States Code, is amended—

21 (1) in paragraph (1)—

22 (A) by striking the semicolon at the end
 23 and inserting a period; and

24 (B) by striking “(1) the term” and insert-
 25 ing the following:

- 1 “(1) AGENCY.—The term”;
2 (2) in paragraph (2)—
3 (A) by striking the semicolon at the end
4 and inserting a period; and
5 (B) by striking “(2) the term” and insert-
6 ing the following:
7 “(2) RULE.—The term”;
8 (3) in paragraph (3)—
9 (A) by striking the semicolon at the end
10 and inserting a period; and
11 (B) by striking “(3) the term” and insert-
12 ing the following:
13 “(3) SMALL BUSINESS.—The term”;
14 (4) in paragraph (4)—
15 (A) by striking the semicolon at the end
16 and inserting a period; and
17 (B) by striking “(4) the term” and insert-
18 ing the following:
19 “(4) SMALL ORGANIZATIONS.—The term”;
20 (5) in paragraph (5)—
21 (A) by striking the semicolon at the end
22 and inserting a period; and
23 (B) by striking “(5) the term” and insert-
24 ing the following:

1 “(5) SMALL GOVERNMENTAL JURISDICTION.—

2 The term”;

3 (6) in paragraph (6)—

4 (A) by striking “; and” and inserting a pe-
5 riod; and

6 (B) by striking “(6) the term” and insert-
7 ing the following:

8 “(6) SMALL ENTITY.—The term”;

9 (7) in paragraph (7), by striking “(7) the term”
10 and inserting the following:

11 “(7) COLLECTION OF INFORMATION.—The
12 term”; and

13 (8) in the matter preceding paragraph (1), by
14 striking “chapter—” and inserting “chapter, the fol-
15 lowing definitions apply:”.

16 (b) HEADING.—The heading of section 605 of title
17 5, United States Code, is amended to read as follows:

18 **“§ 605. Incorporations by reference and certifi-**
19 **cations”.**

20 (c) TABLE OF SECTIONS.—The table of sections for
21 chapter 6 of title 5, United States Code, is amended—

22 (1) by striking the item relating to section 605
23 and inserting the following:

“605. Incorporations by reference and certifications.”;

24 and

- 1 (2) by striking the item relating to section 607
- 2 and inserting the following:

“607. Quantification requirements.”.

